

Message Text

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ACTION IO-14

INFO OCT-01 ISO-00 L-03 CIAE-00 INR-10 NSAE-00 AF-10
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E.O.11652: N/A
TAGS: EGEN, ECOSOC, EINV
SUBJECT: MARCH 29 SESSION OF IGWG ON CODE OF CONDUCT
RELATING TO TRANSNATIONAL CORPORATIONS (TNCS)

REF: USUN 1154

1. SUMMARY: HIGHLIGHTS OF MARCH 29 SESSION WERE
RENEWED DISPUTE OVER DISCUSSION OF SOUTHERN AFRICA
ISSUE AND STATEMENTS ON SECTION IV OF PROPOSED CODE
(GOVERNMENT RESPONSIBILITIES) BY SOVIET DEL AND G-77
REPS. ON FORMER, AGREEMENT REACHED ON BASIS COMPROMISE
SUGGESTED BY USDEL UNDER WHICH ISSUE, AS FRAMED AT PARA
34 OF WORKING PAPER 1 (WP 1), WILL BE INCLUDED IN
"COMMON ELEMENTS" TO BE DISCUSSED RELATING TO NON-
DISCRIMINATION, WITHOUT PREJUDICE TO FUTURE POSITIONS
OF MEMBER GOVERNMENTS ON SUBSTANCE OR LANGUAGE. NEXT
IGWG SESSION WILL DISCUSS ISSUE SUBSTANTIVELY. SOVIET
AND G-77 STATEMENTS INITIALLY NEGATIVE ON SECTION IV,
BUT DID NOT RULE OUT CONCEPT AND CAN ONLY BE EVALUATED
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IN THE LIGHT OF LATER DISCUSSION. END SUMMARY

2. OECD DELS HELD AM MEETING TO DISCUSS PROGRESS IN
IGWG AND EXCHANGE PRELIMINARY VIEWS ON REMAINING ITEMS
IN SECTION III(A) AND PORTIONS OF SECTION IV EXPECTED
TO BE DISCUSSED AT IGWG PLENARY. ALL SHARED US VIEW
THAT PREVIOUS DAY'S DISCUSSION HAD SHOWN MORE COORDI-

NATION AMONG OECD DELS AND SUCCESS OF EFFORTS TO MOVE AWAY FROM FOCUS ON SPECIFIC LANGUAGE OF COMMON ELEMENTS AND TOWARD GREATER DIALOGUE ON GENERAL CONCEPTS.

3. JAMAICAN DEL, ON BEHALF OF G-77, OPENED IGWG SESSION WITH SURPRISE PROPOSAL FOR GROUP TO REOPEN DISCUSSION OF THE NON-COLLABORATION WITH RACIST REGIMES IN SOUTHERN AFRICA, WHICH GROUP HAD AGREED TO DEFER AT PREVIOUS SESSION (SEE PARA 14, REFTEL). JUSTIFICATION GIVEN WAS THAT G-77 SAW NO REASON TO BYPASS ISSUE AND THAT DISCUSSION OF IT AT THIS STAGE IMPORTANT TO ESTABLISH GUIDELINES FOR SECRETARIAT PREPARATION OF DRAFT CODE PROVISIONS. IGWG CHAIRMAN NIKLASSON (SWEDEN) RESISTED WITH SAME ARGUMENTS AS AT PREVIOUS SESSION. HE CONCLUDED, HOWEVER, THAT DECISION ON REOPENING QUESTION WAS UP TO IGWG.

4. US AND OTHER OECD DELS RESPONDED THAT, ON BASIS OF AGREEMENT THAT ISSUE WOULD BE DEFERRED, THEY HAD NOT COME PREPARED TO DISCUSS IT. G-77, BACKED BY EAST EUROPEANS, PERSISTED, PUTTING FORTH SPECIFIC PROPOSAL THAT ANNOTATION IN PARA 34 OF WP 1, "NON-COLLABORATION BY TRANSNATIONAL CORPORATIONS WITH RACIST MINORITY REGIMES IN SOUTHERN AFRICA", BE INTEGRATED WITH "COMMON ELEMENTS" ON NON-DISCRIMINATION IN PARA 33. NIKLASSON SUGGESTION OF DISCUSSION AT NEXT IGWG MEETING LIMITED OFFICIAL USE

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OR AT MARCH 31 SESSION BOTH REJECTED BY G-77.

5. IMPASSE FINALLY BROKEN BY GENERAL ACCEPTANCE OF COMPROMISE SOLUTION SUGGESTED BY USDEL INVOLVING IGWG AGREEMENT ON (A) INCLUSION OF NON-COLLABORATION PARA 34 AS ISSUE FOR DISCUSSION IN "COMMON ELEMENTS" WITHOUT DISCUSSION, AND WITH CAVEATS THAT (1) THIS PARTICULAR FORMULATION PER SE HAD NOT BEEN AGREED UPON AND (2) THIS PROCEDURE WOULD NOT PREJUDICE ANY GOVERNMENT'S FUTURE POSITION REGARDING SUBSTANCE OR DRAFTING IN SUBSEQUENT DISCUSSIONS; (B) PARA 34 WOULD BE FULLY DISCUSSED AT NEXT SESSION OF GROUP THIS SUMMER OR FALL; (C) PARA 35 OF WP 1 WOULD BE DELETED. ON LATTER POINT, CONSENSUS SPECIFICALLY INCLUDED REAFFIRMATION OF PARA 2 OF PREFACE TO WP 1 WHICH READS AS FOLLOWS: "IT WAS UNDERSTOOD THAT THE TENTATIVE FORMULATIONS THAT THE CENTER WOULD PROPOSE AS A BASIS FOR DISCUSSIONS, WOULD NOT BE CONSIDERED AS AGREED TEXT AND THEREFORE WOULD NOT PREJUDICE THE POSITIONS OF GOVERNMENTS." US ASKED FOR AND RECEIVED RULING FROM CHAIR CONFIRMING THESE UNDERSTANDINGS. GROUP RETURNED TO DISCUSSION

OF "COMMON ELEMENTS" UNDER "NON -INTETEEFENCE IN INTER-
NATIONAL POLITICAL AFFAIRS: (SECTION III(A)(5)) IN
AFTERNOON.

6. TNE ABSTENTION FROM ACTING AS INSTRUMENTS OF
FOREIGN POLICY (PARA 47): JAMAICAN DEL LED OFF FOR
G-77, INSISTING ON LIMITING COVERAGE OF THIS ITEM
TO USE OF TNES AS FOREIGN POLICY INSTRUMENTS BY HOME
COUNTRIES ONLY. USDEL, SUPPORTED BY OTHER OECD DELS,
COUNTERED WITH POSITION THAT BOTH HOME AND HOST COUN-

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TRY SHOULD BE COVERED AND POINTED OUT NEED TO BE CARE-
FUL ON THIS POINT IN VIEW OF BREADTH OF "FOREIGN
POLICY" CONCEPT. JAPANESE DEL WITH US AND CANADIAN
DELS NOTED THAT HIS GOVERNMENT USED COMPANIES AS IN-
STRUMENTS OF AID AND TRADE POLICY AND THAT CHANGE IN
LANGUAGE NEEDED SO AS NOT TO IMPLY THIS WAS ILLEGITI-
MATE. NO CONSENSUS REACHED. NIKLASSON CONCLUDED
DISCUSSION BY NOTING THAT COVERAGE OF HOST GOVERNMENTS
COULD NOT BE EXCLUDED AND NEED TO ACCOMMODATE POINT
MADE BY JAPANESE DEL.

7. INTERFERENCE IN GOVERNMENT AFFAIRS (PARA 51):
IN RESPONSE TO QUESTION, NIKLASSON CLARIFIED SCOPE
OF THIS PARA BY NOTING THAT "CONCERNS" WERE
MAINLY POLITICAL. FRENCH DEL QUESTIONED VAGUENESS OF
DEFINING WORD "PROPERLY". OTHERWISE, THERE WAS NO

DISCUSSION OF IT.

8. REQUESTS FOR HOME GOVERNMENT ASSISTANCE (PARA 53):
WELL-COORDINATED OECD DEL CRITICISMS FOCUSED ON
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MEANING OF QUALIFYING TERMS "NORMAL" AND "REGULAR",
AND CONCLUDING CLAUSE. G-77 ARGUED THESE SHOULD BE
INTERPRETED BY HOST GOVERNMENTS. US AND UK
DELS CONTENTED PARA SHOULD ENCOMPASS DIPLOMATIC PRO-
TECTION AND ESPOUSAL OF TNE CLAIMS BY HOME GOVERNMENTS;
US ALSO NOTED WE COULD NOT ACCEPT WORDING EXCLUDING
POSSIBILITY OF US CITIZEN REQUESTING GOVERNMENT ACTION
UNDER RELEVANT US LAWS. SWISS DEL CITED VIENNA CON-
VENTION ON DIPLOMATIC RELATIONS AND ARTICLE 27 OF
ICSID AS USEFUL DEFINITIONAL TERMS OF REFERENCE.
DESPITE THESE DIFFERENCES, FORMULA GENERALLY ACCEPTED
AS BASIS FOR FUTURE WORK.

9. EXHAUSTION OF HOST COUNTRY LEGAL REMEDIES IN DIS-
PUTES (PARA 54): JAMAICAN DEL, ON BEHALF OF G-77,
PROPOSED AMENDING TEXT BY (1) CHANGING "INTERNATIONAL
PRACTICE" TO "NORMAL PRACTICE" AND (2) ALTERING
FOLLOWING CLAUSE TO READ: "EXHAUST NATIONAL LEGAL
AND OTHER MEANS AVAILABLE IN HOST COUNTRIES." EXAMPLES
OF "OTHER MEANS" INCLUDED CONCILIATION OR ARBITRATION
MECHANISMS. UKDEL QUESTIONED "NORMAL" AS TOO VAGUE
AND RECOMMENDED INSERTION OF LANGUAGE PROVIDING FOR
TNE APPEALS TO HOME GOVERNMENTS IF HOST LEGAL MECHANISMS
PROVE INEFFECTIVE. USDEL EXPRESSED SUPPORT FOR
RETAINING REFERENCE TO INTERNATIONAL PRACTICE AND CAU-
TIONED AGAINST LANGUAGE THAT WOULD CALL INTO QUESTION
CONFLICT RESOLUTION AGREEMENTS PREVIOUSLY ARRIVED AT.
TERM "DIPLOMATIC SUPPORT" WAS CRITICIZED BY US AND SWISS
DELS AS IMPRECISE IN VIEW OF DEFINITIONAL DISCUSSION
OF REPRESENTATION AND PROTECTION AT PARA 53. GROUP
PASSED ON WITHOUT RESOLVING ANY OF THESE ISSUES.

10. CORRUPT PRACTICES (PARA 58): NIKLASSON REAFFIRMED
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GROUP'S PREVIOUS DECISION TO DEFER DISCUSSION OF THIS
ITEM.

11. NIKLASSON TOOK ADVANTAGE OF FEW MINUTES REMAIN-
ING IN SESSION TO BEGIN DISCUSSION OF SECTION IV. ON

PREVIOUS DAY, EASTERN EUROPEAN COUNTRIES HAD CIRCULATED
CONFERENCE ROOM PAPER (NO.2) SETTING OUT THEIR POSITION
ON CODE IN GENERAL AND MAJOR ISSUES UNDER DISCUSSION.
AT THIS SESSION, WHEN NIKLASSON FINISHED INTRODUCTION,
SOVDEL TOOK FLOOR TO MAKE FOLLOWING STATEMENT:

"I WOULD LIKE TO MAKE AN INTRODUCTORY STATEMENT WHICH
ADDRESSES ITSELF TO THE ENTIRE SPIRIT OF THIS CODE
WHICH IS FOR CONSIDERATION BEFORE US.

AT THE BEGINNING OF SECTION IV, WE SHOULD KEEP IN
MIND TWO MAJOR ELEMENTS RELATING TO THE TREATMENT OF
TNCS:

--AS A CONSTITUENT ELEMENT OF PERMANENT SOVEREIGNTY,
EACH STATE HAS THE INALIENABLE RIGHT TO REGULATE AND
TO EFFECT ITS SOVEREIGNTY OVER THE ACTIVITIES OF
TNCS OPERATING IN ITS TERRITORY. FOR THIS REASON, TNCS
SHOULD EXCLUSIVELY FALL WITHIN THE NATIONAL JURISDICTION
OF THE COUNTRY THEY OPERATE IN.

--SINCE THERE ARE NO INTERNATIONAL STANDARDS WHICH ARE
BINDING ON ALL STATES RELATING TO THE TREATMENT OF TNCS,
INTERNATIONAL REGULATION CAN OCCUR ON A BILATERAL OR
MULTILATERAL BASIS BETWEEN STATES, AND BETWEEN TNCS
AND STATE ORGANIZATIONS OR OTHER AGENCIES WHICH HAVE
BEEN APPROVED BY THE GOVERNMENT OF THE HOST COUNTRY."

IN RESPONSE TO QUESTION FROM USDEL AS TO WHETHER HE
WAS REFERRING TO LANGUAGE OR CONCEPTS, SOVDEL INDI-
CATED THAT IDEALLY THESE CONCEPTS WOULD BE INCLUDED
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IN TEXT BUT THAT THIS MIGHT NOT BE NECESSARY AS LONG
AS VARIOUS POINTS IN TEXT REFLECTED THESE THEMES.

12. JAMAICAN DEL ALSO REITERATED BASIC G-77 "DIFFICUL-

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TIES" WITH GENERAL FOCUS OF CHAPTER IV, AND STRESSED:
(1) OBJECTIVE OF CODE IS TO ELIMINATE NEGATIVE EFFECTS
OF TNC ACTIVITIES, (2) CODE IS ADDRESSED TO TNE'S,
AND NOT GOVERNMENTS, AND (3) ALL CONFLICTS BETWEEN
PROVISIONS OF SECTIONS IV AND III SHOULD BE ELIMINATED.
TAKING APPROACH SIMILAR TO SOVDEL, HE INDICATED THAT
IN G-77 VIEW THESE POINTS DEFINED PROPER PERSPECTIVE
ON SECTION IV AND ITS RELATION TO OTHER PARTS OF CODE.
DISCUSSION OF SECTION IV(A) WILL RESUME MARCH 30.
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